Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

In the Matter of	)	
	)	
1984 JUKEBOX ROYALTY DISTRIBUTION PROCEEDING	)	Docket No. 85-1-84JD

ACEMLA'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Lawrence J. Bernard, Jr.

Ward & Mendelsohn, P.C.
1100 - 17th Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 785-0200

Counsel for ACEMLA

Date: October 20, 1986

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

In the Matter of	)	
	)	
1984 JUKEBOX ROYALTY DISTRIBUTION PROCEEDING	)	Docket No. 85-1-84JD

ACEMLA'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Asociacion de Compositores y Editores de Musica Latinoamericana ("ACEMLA"), by its attorneys, hereby submits its proposed findings of fact and conclusions of law in the captioned proceeding.

I. Preliminary Statement

1. By Order dated November 15, 1985, the Tribunal indicated that it had received claims for portions of the 1984 jukebox royalty fund from five parties, that three of the parties, ASCAP, BMI and SESAC, Inc. ("Settling Parties") had entered into an agreement concerning the distribution of the portions of the fund they might be entitled to, and that the fourth party, Italian Book Company ("IBC") had reached a settlement with the Settling Parties and withdrawn its claim. The Tribunal noted that the other claimant, ACEMLA, had not entered into a settlement and therefore the Tribunal declared the existence of a contro-

versy in accordance with Section 116(c)(3) of the Copyright Revision Act of 1976 (hereinafter sometimes referred to as the "Statute"), 17 U.S.C. §116(c)(3). Finally, the Tribunal directed all claimants to submit evidence in support of their claims on or before May 15, 1986. 50 Fed. Reg. 47794, published November 20, 1985. On the same date, the Tribunal issued a separate Order providing for the distribution of 90% of the 1984 jukebox fund to the Settling Parties. Ibid.

2. Pursuant to various orders of the Tribunal, ACEMLA and Settling Parties exchanged their direct written cases on May 15, 1986 and filed supplements thereto on September 12, 1986. On September 22 and 23, 1986, hearings were held on the direct cases. Written rebuttal cases were exchanged on September 29, 1986, and hearings on the rebuttal cases were held on September 30 and October 1, 1986.

II. Issues to be Resolved in this Proceeding

3. The Settling Parties have submitted a claim for 100% of the jukebox royalty fees collected for the year 1984. ACEMLA claims entitlement to that portion of the 1984 jukebox royalty fees attributable to play of Spanish language music on jukeboxes during that year. ACEMLA asserted that Spanish language music might account for as much as 10% of the jukebox royalty fees generated in

1984. Thus, as a practical matter, the controversy before the Tribunal relates only to Spanish language music which ACEMLA concedes amounts to no more than 10% of the 1984 jukebox royalty fees.[1]

4. In addition, under Section 116(c)(4) of the Statute, claimants before the Tribunal are either (A) copyright owners, or (B) "performing rights societies". Section 116(e)(3) specifically names the Settling Parties as performing rights societies. In contrast, while the Tribunal has previously ruled that ACEMLA was not a performing rights society in 1982 or 1983, it specifically refrained from ruling on ACEMLA's right to performing rights society status in this proceeding.[2] Thus, a controversy also exists as to ACEMLA's right to participate in the distribution of 1984 jukebox royalty funds as a performing rights society.

5. Although ACEMLA is not aware of any formal designation of issues in this proceeding, based on the foregoing analysis, it submits that the following statement of issues would serve as a proper framework for resolving this proceeding:

---

[1]See statements of counsel for ACEMLA and ASCAP at Tr. 180-183.

[2]See Final Determination of the Distribution of the 1982 (Remand) and the 1983 Jukebox Royalty Funds ("1982/1983 Final Determination"), 50 Fed. Reg. 47577, 47581, published November 19, 1985.

1. To determine whether ACEMLA is qualified to participate as a performing rights society claimant in this proceeding?

2. Assuming Issue No. 1 is resolved affirmatively, to determine that portion of the 1984 jukebox royalties which should be attributed to the use of Spanish language music on jukeboxes?

3. Again assuming that Issue No. 1 is resolved affirmatively, to determine that portion of the 1984 jukebox royalties attributable to Spanish language music which should be distributed to ACEMLA and to the Settling Parties?

ACEMLA's proposed findings of fact and conclusions of law which follow are organized around the foregoing suggested issues.

III. Proposed Findings of Fact

A. ACEMLA's Right to Performing Rights Society Status

6. Mr. L. Raul Bernard is the sole proprietor of two unincorporated businesses known as Latin American Music and International Music (Tr. 1213). Latin American Music was established before April of 1981. In that month a corporation was formed under the name of Latin American Music Co., Inc. ("LAMCO"). 1982/1983 Final Determination, supra, 50 Fed. Reg. at 47579. LAMCO was incorporated "[t]o engage in the business of licensing performance, synchronization and other rights under copyright and musical compositions, and to do all acts necessary or related to conduct of such

business". Ibid. ACEMLA is an assumed name under which LAMCO does business, and an assumed name certificate was filed with the New York State Department of Corporations and State Records on April 24, 1984. Ibid.

7. LAMCO, Latin American Music and International Music have entered into contracts with individual composers as well as foreign and domestic publishing companies and foreign performing rights societies. Ibid. A typical LAMCO contract with a composer provides that a composer assigns "the entire exclusive right to publicly perform and televise". ACEMLA Ex. 18, Attachment J, p. 1. The LAMCO contracts with Musica Dominicana, S.A. of the Dominican Republic and West Side Music Publishing Co. of New York provide for the assignment of "[t]he exclusive rights of public performance, including radio and television broadcasting, and of licensing said rights".[3] Mr. Bernard testified that after the formation of LAMCO, contracts entered into by the Latin American Music and International Music proprietorships were assigned to LAMCO and that then LAMCO assigned the performing rights portion of the contracts to ACEMLA; however, there are no formal documents describing the assignments. Tr. 11-12. LAMCO began using

---

[3]These contracts were submitted to the Tribunal as attachments to a letter dated October 16, 1985 from ACEMLA's former counsel.

the ACEMLA name for purposes of carrying out the performing rights licensing functions as early as June 16, 1982 when it addressed a letter to Radio Station WADO in New York City attempting to secure performing rights licensing agreement with said station. See ACEMLA Ex. 2 and "Response of ACEMLA . . ." filed September 29, 1986.[4]

8. In any event, Mr. Bernard testified that he individually is the sole proprietor of Latin American Music and International Music Company, and the only stockholder, officer and director of LAMCO or ACEMLA. Tr. 12-13. Thus, for purposes of the determination to be made by this Tribunal, ACEMLA appears as the claimant for performing rights royalties earned by the two proprietorships and LAMCO, but as a matter of law, ACEMLA cannot be viewed as a separate entity. In short, ACEMLA was named as the claimant in this proceeding because Mr. Bernard made a determination to handle the performing rights assignments received by other entities under the name of ACEMLA. For this reason, all of Mr. Bernard's entities are hereinafter referred to as "ACEMLA", unless otherwise noted.

9. ACEMLA has been active in licensing the performing rights it controls before this Tribunal in Jukebox

---

[4]The second page of the June 16, 1982 letter was the second item attached to the Response.

Distribution Proceedings beginning in 1981. ACEMLA has also engaged in active attempts to license the public performance of titles in its catalogue to radio and television stations. 1982/1983 Final Determination, 50 Fed. Reg. at 47579; Tr. 141-143. To date, ACEMLA has not received any royalties for the public performance of its works and has not made any distributions to the composers, publishing companies or foreign societies with which it has agreements. Ibid.

10. In contrast to the contractual arrangements ACEMLA has entered into with composers, music publishers and foreign societies, the typical U.S. music publisher or sub-publisher does not contract for performing rights royalties. ABS 1982/1983 Exs. 11X and 12X.[5] However, since the efforts music publishers or sub-publishers normally make on behalf of composers to have their music recorded, promoted and distributed obviously assist composers in having their songs publicly performed, the U.S. music business recognizes that publishers and sub-publishers are entitled to their own performing rights which are separate from those earned by the composer. Usually, fees earned for public performance of copyrighted music are divided equally between the composer(s) and the

---

[5]These exhibits were attached to the transcript of the 1982/1983 Proceedings of Wednesday, October 2, 1985.

publisher(s) and paid directly to those parties by the performing rights societies. Tr. 382-4.

11. However, when the Settling Parties deal with foreign performing rights societies, the entire amount of royalties earned from the public performance of music controlled by those societies is distributed to foreign society and they, in turn, re-distribute the funds to composers and publishers. Tr. 351-3. ACEMLA considered associating with the Settling Parties for purposes of collecting performing rights royalties for music it controls and conducted negotiations with all three of those organizations in late 1981 or early 1982.[6] However, after a number of meetings and other contacts with Mr. Bernard and his attorneys, ASCAP and BMI refused to distribute all of the royalty fees earned by ACEMLA's works directly to ACEMLA and insisted upon dividing those fees and directly paying equal shares to the composers and ACEMLA. Ibid.

B. The Percentage of Spanish Music Played On Jukeboxes in 1984

12. According to the U.S. Census, 15.9 million Hispanics resided in the United States in March of 1983. This figure represents about 6.4% of the United States' population. More than 12 million of the United States' 210 million resi-

[6]See Tr. 15, 17-21, and pps. 2-4 of the "Response of ACEMLA . . ." filed September 29, 1986.

dents (5%) spoke Spanish at home. Moreover, some 63% of Hispanics were 29 years of age or younger in 1980 as compared to 49% of the non-Hispanic population. (1972/1973 ACEMLA Ex. 8, pp. 1-2).

13. According to the results of a study by Discos CBS International, Hispanics purchased more records per capita than non-Hispanics. Of the 20 records and tapes that a typical Hispanic buys each year, 16 are of Spanish language music. (See Ex. E to ACEMLA's Supplemental Statement and Justification of Claim filed in the 1982 proceeding).

14. In an article titled "Spanish Speaking Market-On the Move: Largest Ethnic Group in the U.S.", Music Video Retailer, New York, noted that the median age of Hispanics is 22 years and that the Spanish audience "exhibits a fierce allegiance to its homeland . . . To the Spanish speaking person, music is a significant part of life". (Id. at Ex. F). According to Broadcast Yearbook 1985, there are more than 200 Spanish language radio stations in the United States. (1982/1983 ACEMLA Ex. 9X, 1982/1983 Tr. 335).

15. In an informal 1985 survey of jukeboxes in states with heavy concentrations of Hispanics, the Settling Parties found jukeboxes with 6,809 listings of Spanish language song titles.[7] ACEMLA Ex. 3 in this proceeding

---

[7]See Settling Parties 1982/1983 Direct Case, Testimony of Gloria Messinger, pp. 4-10.

consists of copies of jukebox title strips reflecting Spanish language song titles sold to jukebox operators during 1984. During 1984 Billboard magazine regularly published lists of best-selling long play Spanish language records in the Commonwealth of Puerto Rico and the States of New York, California, Florida and Texas. ACEMLA Ex. 9, pp. 1-19. Other publications also regularly published similar lists of best-selling Spanish language recordings in 1984. See ACEMLA Exs. 5-8.

C. Spanish Language Music Played on Jukeboxes in 1984

i. ACEMLA's Evidence Concerning Spanish Language Music in Its Repertory

16. ACEMLA submitted evidence that 24 musical compositions for which it controlled performing rights were included on records distributed to jukebox owners and operators in 1984 by a jukebox supply firm located in New York City. ACEMLA Direct Case, p. 2, Ex. 3. From January through November 1984, at least 12 musical compositions from the ACEMLA repertory appeared in best selling Spanish language long play record albums listed on record charts appearing in Canales, a New York City publication. ACEMLA Direct Case, p. 3 and Exs. 5 and 11.[8]

[8]Although 21 albums were listed in the Canales chart, at the time of hearing ACEMLA was not able to locate nine of those albums to determine exactly which ACEMLA compositions had appeared thereon. Hence, only 12 titles were actually documented. See ACEMLA Ex. 11.

Between January and December of 1984, a number of musical compositions for which ACEMLA controlled the performing rights appeared on best selling Spanish music single record charts in Guia Radil del Show, published weekly in Puerto Rico. ACEMLA Ex. 6. The May 5, 1984 edition of Twenty-three Milliones, a Miami, Florida Spanish language publication included a "hit parade" of popular Spanish language music and six ACEMLA controlled works were included among the 25 most popular songs on the east coast of the United States. ACEMLA Direct Case, p. 4; ACEMLA Ex. 7. The publication Farandula, published in both New York and Puerto Rico, contained charts of Spanish language long play in May and December of 1984. A number of titles from ACEMLA's repertory were included on the long play records listed. ACEMLA Direct Case, p. 4; ACEMLA Exs. 8 and 13. Finally, Billboard magazine published charts of the best selling Spanish language long play records for the months of January through September of 1984. At least 36 musical compositions represented in ACEMLA's catalogue appeared in long play albums listed on these charts. ACEMLA Direct Case, p. 4; ACEMLA Exs. 9 and 14.[9] Musical compositions for which ACEMLA licenses public performance rights were also con-

---

[9]At the time of the hearing, ACEMLA was not able to locate all of the albums listed on these charts and thus was not able to identify all of the ACEMLA titles contained in these albums. See ACEMLA Ex. 14.

tained on hit record charts distributed in the months of January, March, April and December of 1984 by Radio Station WJIT, a Spanish language station licensed to New York City. ACEMLA Direct Case, p. 4; ACEMLA Ex. 10.

17. The record of the 1982/1983 Jukebox Proceeding contains raw data from AN ASCAP commissioned survey of 76 Jukeboxes in Hispanic Neighborhoods. The titles of all musical compositions appearing on the 76 jukeboxes in the limited, non-randon survey were listed. See Settling Parties 1982/1983 Direct Case, Testimony of Gloria Messinger, pp. 4-10. ACEMLA reviewed the underlying data from these surveys and found that 352 compositions in its repertory were included on these jukeboxes and accounted for 509 listings therein.[10]

18. The Settling Parties claimed in rebuttal that 128 of these titles were actually in their own catalogues[11]: However, the witness they proferred to testify concerning their claims to these titles had not participated in the preparation of the exhibit and was not familiar with the process used in documenting these claims. See Tr. 429, 454-455, 468-469. Moreover, although ACEMLA requested the

---

[10]The 352 titles are listed alphabetically in S.P. Ex. 28R. Each of the 509 listings appears in ACEMLA Ex. 4.

[11]The titles claimed by the Settling Parties were marked by asterisks in S.P. Ex. 28R.

production of the underlying documentation the Settling Parties used in claiming these 128 titles, its request was refused and the Tribunal noted that rather than direct the Settling Parties to provide this data, it would consider their refusal accessing the weight to be given to the exhibit. Tr. 455-459. Accordingly, inasmuch as neither a witness who was familiar with the processes used to support the claim nor the underlying documents in support of the claim were made available, ACEMLA submits that no weight can be given to the Settling Parties claim that 128 titles found on the 1985 Limited Jukebox Survey were in their repertories.

19. Finally, both ASCAP and BMI analyzed some 200 titles in the ACEMLA catalogue to determine whether, had these titles been in their own catalogues, they would have earned credits for public performances during 1984. BMI found that 37 of the 200 titles would have earned credits had they been in BMI's catalogue. See Settling Parties Rebuttal Testimony of Allen H. Smith, p. 5 and S.P. Ex. 31R. ASCAP found that 32 ACEMLA titles would have earned credits from ASCAP had those titles been in the ASCAP catalogue during 1984. S.P. Ex. 30R. However, it is significant that the two lists of 32 and 37 titles respectively contain only 12 titles in common. Compare S.P. Ex. 30R with S.P. Ex. 31R.

ii. Proof Submitted by the Settling Parties Concerning Appearances of Spanish Language Music Controlled By Them on Jukeboxes in 1984

20. Other than generalized statements describing Spanish works in their repertories and the submission of a list of 34 songs which came into their repertories during 1984,[12] the Settling Parties offered virtually no evidence to show that works in their repertories were played on jukeboxes in 1984. BMI's witness Allen H. Smith was unable to explain why the Settling Parties did not analyze the performance credits earned by their own Spanish language music during 1984, when they did make such an analysis for part of ACEMLA's repertory. Tr. 326-328. ASCAP witness Paul Alder testified that the Settling Parties had made no effort to demonstrate jukebox play of their own Spanish language repertories ". . .because we aren't claimants here. We are performing rights societies. . .We don't have to put in any evidence at all". Tr. 387-388. On redirect examination, Mr. Adler testified that the Settling Parties would not be required to put in any evidence unless the Tribunal found that ACEMLA was a performing rights society, "then that becomes a different issue". Tr. 489.

---

[12] See "Joint Evidentiary Statement of [Settling Parties]" dated May 15, 1986, pp. 3-4 and S.P. Ex. 4.

IV. Proposed Conclusions of Law

A. ACEMLA Has Demonstrated That It Is A Performing Rights Society

1. Section 116(c)(4) of the Statute describes the framework for the Tribunal's task of making distributions in this proceeding in the following terms:

> "The fees to be distributed shall be divided as follows:
>
> > (A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement.
> >
> > (B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove entitlement."

Thus, the Congress created two classes of claimants: (a) copyright owners not affiliated with the performing rights society; and (b) performing rights societies. Section 116(e)(3) defines a "performing rights society" as an "association or corporation that licenses the public performance of non-dramatic musical works on behalf of the copyright owners, such as [the Settling Parties]". The Statute makes no other mention of performing rights societies and there is no legislative history in which they are described or even mentioned.

2. The proper starting place for statutory interpretation is with "the language employed by Congress". Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). The statutory definition at bar specifies two parts to the performing rights society question: Is the claimant an "association or corporation"? and does it license "the public performance of non-dramatic musical works on behalf of the copyright owners"? The claimant ACEMLA clearly is a corporation.[1] It just as clearly licenses the public performance of non-dramatic musical works on behalf of copyright owners. In this case, ACEMLA has proven both its contractual agreements to license public performance rights and its efforts to license users. Moreover, under Section 116(b)(1) of the Statute, the Congress created a "compulsory license" for the public performance of works on jukeboxes. The record in this and prior Jukebox Royalty Proceedings demonstrates beyond peradventure that compositions which ACEMLA has acquired the right to license for public performance on behalf of copyright owners were played on jukeboxes in 1984. Since ACEMLA clearly controls the performing rights to those compositions in the United States, the jukebox owners could only have obtained a license to perform them from ACEMLA. Accordingly, ACEMLA submits that it is

---

[1]The fact that ACEMLA is an "assumed" name of LAMCO, a corporation, cannot conceivably affect its corporate status.

wholly unnecessary to go beyond the clear meaning of the words in the Statute in order to determine its right to participate in this proceeding as a performing rights society claimant. See, e.g., Telecommunications Research and Action Center v. FCC, Case No. 85-1160, U.S.App.D.C., Slip Opinion pages 27-28, released September 19, 1986.

3. Indeed, in the past this Tribunal has routinely treated small claimants having none of the characteristics of the Settling Parties as performing rights societies. Thus, in the Final Determination of the 1979/1980 Jukebox Distribution Proceedings, the Tribunal noted that "three of the four performing rights societies. . .[had] entered into a voluntary agreement. . ." while the fourth, IBC, had requested 1% of the royalties. The Tribunal characterized IBC as a "small society". 47 Fed. Reg. 18406, published April 29, 1982. Similarly, in its Final Determination in the 1982 Jukebox Royalty Distribution Proceeding, 49 Fed. Reg. 34556, published August 31, 1984, the Tribunal treated ACEMLA as a performing rights society. See discussion in ACEMLA v. Copyright Royalty Tribunal, 763 F.2d 101, 107-108 (2d Cir. 1985). Indeed, the Court itself found that there was a "substantial basis for regarding [ACEMLA] as a performing rights soecity". Ibid.

4. In the 1982/1983 Final Determination, the Tribunal concluded that ACEMLA was not a performing rights society

in 1982 or 1983, but did "not reach the question of whether ACEMLA was a performing rights society in 1984. . .". 50 Fed. Reg. 47577, at 47581. In addition, in an effort to further define the issue in the event that it arose in a future proceeding, the Tribunal, in dicta, posited that since a music publishing company or a United States sub-publisher of a foreign publishing company could enforce performing rights, the mere ability to license copyright performing rights did not make an entity a performing rights society. Ibid. ACEMLA respectfully submits that the Tribunal's position simply is not supported by the clear meaning of the words Congress adopted in the Statute. There is no reference in the Statute to music publishing companies or United States sub-publishers of foreign music companies. Thus, there is nothing in the Statute which would permit the carving out of an exception which would exclude entities which perform the functions of both performing rights societies and music publishers from claiming performing rights society status.

5. Under traditional business practices in the United State's music industry, when publishing companies enter contracts with composers, they do not obtain the composers' performing rights.[2] However, traditional U.S. music

---

[2]See ABS Exs. 11X and 12 X in the 1982/1983 proceeding, attached to the transcript of the proceedings of Wednesday, October 2, 1985.

industry practices recognize that the efforts publishers make to have compositions published, recorded and distributed inevitably play a part in achieving the public performance of such compositions. For this reason the Settling Parties consider that publishers earn their own performing rights which are separate from those earned by the composer. (Tr. 382-4).

6. Moreover, under traditional U.S. music industry practices, publishing companies do not seek to collect either their own public performance royalties or those of the composers. Rather, publishers and composers traditionally have joined performing rights societies separately, and those societies have divided fees earned from public performances equally between the publisher(s) and composer(s) of any given composition. The origin of these practices is not described in the record, but this separation of function may have resulted from the potential economic leverage obtained by ASCAP's early dominance of the performing rights field. In 1950, the United States District Court for the Southern District of New York enjoined and restrained ASCAP from "[h]olding, acquiring, licensing, enforcing, or negotiating concerning any rights in copyrighted musical compositions other than rights of

public performance on a non-exclusive basis".[3] Although BMI also restricts its activities to the licensing of performing rights, SESAC apparently licenses both mechanical and performing rights.[4]

7. In any event, if a traditional U.S. music business model publishing company filed a claim with the Tribunal, it would be seeking its own royalties, rather than making a claim on behalf of a copyright owner. Thus, such a publishing company would clearly be a "copyright owner" and entitled to participate in royalty distribution proceedings only under Section 116(c)(4)(A), because it would not be an organization "that licenses the public performance of . . . musical works on behalf of copyright owners . . ." Publishers do not acquire performing rights from composers for licensing, they earn their own performing rights by publishing and promoting the composer's work.

---

[3]See U.S. v. ASCAP, Civil Action No. 13-95, amended Final Judgment of March 14, 1950, Paragraph IV(A). A copy of the Final Judgment is attached as Exhibit 1 to Appendix A to a Reply of the Settling Parties filed with the Tribunal in the 1983 Jukebox Proceeding on June 24, 1985. The cited paragraph appears at page 2 of said exhibit.

[4]See Supplement to Direct Case of ACEMLA filed in this proceeding on September 12, 1986, pp. 2-3; Cf. Tr. 45; see also pages 107-8 of Billboard magazine's publication titled 1985/1986 International Buyer's Guide which contains a listing of "Licensing Organizations, Music". Therein, ASCAP and BMI are described as licensing "performing rights only", while SESAC is listed as licensing "mechanical & performing rights". A copy of relevant pages from the cited publication is attached hereto as Appendix A for the convenience of the Tribunal.

8. Moreover, no provision of the Statute recognizes or enforces traditional U.S. music industry practices. In fact, 17 U.S.C. §201(d)(1) provides that "ownership of a copyright may be tranferred to a holder in part" and §201(d)(2) provides that "exclusive rights comprised in a copyright, including subdivision of the rights specified by Section 106, may be transferred. . .and owned separately". Thus, the Statute permits American authors and publishers to divide their respective copyright rights in any fashion they please. In short, there is nothing in the Statute which disqualifies from the performing rights society category an organization which also performs functions commonly reserved to publishing companies in the U.S. music business.

9. In addition, the record demonstrates that ACEMLA is not a traditional U.S. music business model publishing company. All of the contracts it has with composers and foreign publishing companies provide that ACEMLA wil collect all payments for all performing rights and then distribute those payments to publishers and/or composers. In some cases, the publisher of ACEMLA's works is LAMCO, but in many other cases LAMCO is merely a sub-publisher[5] and performing rights fees ultimately would be distributed in three

---

[5]The Edimusica -- ACEMLA relationship which accounts for the largest portion of ACEMLA's catalogue would be an example of this type of arrangement.

parts: a portion to the publisher, a portion to the composer and a portion to LAMCO, the sub-publisher. In any event, unlike traditional model U.S. publishers, ACEMLA contracts with copyright owners to collect for the benefit of the owerns what in the U.S. music business have come to be known as the publisher's performing rights and those of the composer. Once these fees have been collected, they are to be distributed to publisher and composer under the contracts in a fashion similar to the traditional U.S. music business model "performing rights society".

10. Finally, it should be noted that ACEMLA is not a copyright "owner" as that term would normally be applied, because in most cases it acquires only rights to collect royalties for limited periods of time and in limited geographic areas. Thus, the copyright owner merely "assigns" some right to ACEMLA for collection and distribution and retains other rights which in turn may be assigned to third parties. Under this practice, the owner pays ACEMLA for its efforts in collecting performance right payments, but retains the right to receive a portion of these payments. Thus, ACEMLA acts on behalf of the copyright owner.

11. Typically, when the Settling Parties deal with foreign performing rights societies, they do not make separate payments to publishers and composers, but distri-

bute all of the fees to the foreign society for re-distribution in accordance with the contractual relationships the foreign society may have with composers and/or publishers (Tr. 351-3). When Mr. Bernard of ACEMLA met with ASCAP and BMI, in late 1981 and early 1982, to explore association with those organizations for collection of the performing rights royalties to compositions controlled by ACEMLA, he requested that ACEMLA be paid royalties for all performing rights; i.e., that it be treated in the same manner as a foreign society. ASCAP and BMI refused,[6] and thereafter Mr. Bernard filed the first LAMCO/ACEMLA claim with the Tribunal for jukebox royalties earned in 1981.

12. Despite the fact that the Statute is entirely silent on the publishing company-performing rights society question, the Settling Parties urge the Tribunal to adopt by administrative fiat definitions for the treatment of claimants which would be clearly anti-competitive. The statutory construction advocated by the Settling Parties would force publishing companies to deal with the Settling Parties, rather than become new entrants capable of competing in the performing rights field with the Settling Parties

---

[6]Tr. 15, 17-21 and pages 2-4 of Response of ACEMLA to Tribunal's Requests for Additional Documents Supporting ACEMLA's Direct Case, filed in this proceeding on September 29, 1986.

existing oligopoly. Neither the Statute nor its legislative history can be interpreted in a manner which would prohibit music publishing companies from entering the business of licensing the public performance of copyrights on behalf of copyright owners. Since music publishers are active in the business and already license mechanical rights, they would be a most likely source of new entrants into the highly concentrated performing rights licensing field. The Tribunal cannot should not create an artificial barrier to competition which would benefit the Settling Parties. Such action would clearly violate the open market, pro-competition spirit of the antitrust laws. As the Supreme Court said in Southern Steampship Co. v. NLRB, 316 U.S. 31, 47 (1942):

> ". . .the Board has not been commissioned to effectuate policies of the Labor Relations Act so single mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently, the entire scope of the Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative agency that it undertake this accommodation. . ."

See also LaRose v. FCC, 494 F.2d 1145 (D.C. Cir. 1974) and Community Television of Southern California v. Gotfreid, 103 S.Ct. 885, 892, n. 14 (1983) (an agency charged with promoting the public interest in a particular substantive area may not simply "ignore" other federal policies).

13. In the 1982/1983 Jukebox Final Determination, the Tribunal posited "several unanswered questions" regarding its statutory duty to determine whether a claimant was a performing rights society. ACEMLA submits that one of these questions, "Can a performing rights society be a division of a music publishing company or must it be a separate entity?", is clearly answered by the foregoing discussion.

14. Another question raised in the 1982/1983 Final Determination was: "Does the filing of a certificate of assumed name create a performing rights society?" ACEMLA submits that the answer to this question is clearly "no". Nor would the failure to file such a certificate disqualify an organization from being a performing rights society. As discussed above, the Statute does not attempt to regulate the organizational structure of performing rights societies; instead, it merely requires a determination of the substance of an organization's activities; i.e., does the claimant license the public performance of non-dramatic musical works on behalf of copyright owners.

15. The final question posited by the Tribunal in the 1982/1983 Final Determination was: ". . .must there be some activity by an organization other than the mere setting up of a legal entity to make it a performing rights society?" ACEMLA submits that the answer to this

question is "yes". Again, the Statute clearly requires that the Tribunal look to substance rather than form. To a large extent, the Tribunal itself answered this last question in the 1982/1983 Final Determination when it stated that

> ". . .the Tribunal has resolved the issue of 'bigness'. . .raised at hearings. . .the Tribunal has no interest in determining whether a performing rights society is big enough and effective enough to attract copyright owners, or to carry out its goals. We do not seek to give to or withhold from any entity a 'Government stamp approval' that it is a 'good', 'effective' or any other kind of performing rights society. . ." (50 Fed. Reg. at 47581)

B. In The Absence of a Formal Survey of Jukeboxes The Tribunal Must Conclude That Spanish Language Music Represents At Least Seven Percent of Music Played On Jukeboxes During 1984

16. The evidentiary problems inherent in the task assigned to the Tribunal by Congress were first considered in the 1979 Jukebox Distribution Proceeding. There, after assessing the cases submitted by competing performing rights societies ASCAP, BMI, SESAC and IBC, the Tribunal determined that the record did not provide an adequate basis on which to make a distribution. 46 Fed. Reg. 58139, published November 30, 1981. Instead of making a distribution, the Tribunal requested the parties to submit proposals for a

joint survey of jukeboxes. Id. However, after release of the Tribunal's order, ASCAP, BMI and SESAC entered into an agreement to divide the funds among themselves, as permitted by the Statute, and they did not respond to the Tribunal's request for a survey. Subsequently, the 1979 and 1980 Jukebox Royalty Distribution Proceedings were resolved by honoring the Settling Parties' agreement and by making a small award to IBC. Again, no random survey of jukeboxes was submitted to the Tribunal. 47 Fed. Reg. 18406, published April 29, 1982.

17. Since filing as a claimant in the 1982 proceeding, ACEMLA has repeatedly noted the lack of established criteria for submitting proof in these proceedings and has also suggested that these problems could largely be solved through preparation of a joint survey. ACEMLA suggested that such a survey could be paid for with funds provided by the Tribunal pursuant to 17 U.S.C. §807, as a "reasonable cost" of the Tribunal's operations. See ACEMLA 1982 Justification Statement; 1982/1983 Prehearing Conference, Tr. 23-24 and 28-29; and ACEMLA's letters to the Tribunal of February 14 and June 20, 1985. The Settling Parties have consistently opposed the taking of such a survey on economic grounds. See 1982/1983 Prehearing Conference, Tr. 30; 1982/1983 BMI Direct Case, Testimony of Allan H. Smith, pp. 6-7. While the Tribunal itself has continued to recom-

mend that a survey of jukeboxes be submitted, it has ruled that 17 U.S.C. §807 did not permit the use of royalty funds to underwrite the cost of a jukebox survey of Spanish-language music. See Order Consolidating Proceedings and Setting Future Procedural Dates, released in the 1982/1983 Jukebox Royalty Proceeding on July 30, 1985.

18. In any event, no reliable survey of Spanish language music appearing on jukeboxes has ever been submitted to the Tribunal. And, as a result, the evidence in the instant proceeding as well as that submitted in prior proceedings does not provide a basis for a precise conclusion concerning the percentage of jukebox royalties attributable to the play of Spanish language music. Nevertheless, the Tribunal is required by Statute to distribute all of the jukebox royalty fees collected in 1984 to the claiming parties. However, the Court of Appeals for the Second Circuit has ruled that Congress gave the Tribunal wide discretion in determining the "type of proof that will be acceptable and the weight it should receive", so long as the same standards are applied to all competing claimants.[7]

19. ACEMLA has submitted a claim for 10% of the 1984 jukebox royalty fees, based exclusively on its rights to license Spanish language music for public performance.

---

[7]ACEMLA v. CRT, supra, 763 F.2d at 109.

Thus, it is apparent that the Tribunal must determine the percentage of the total royalty fees paid by the jukebox owners in 1984 attributable to Spanish language music, before it can determine the fees earned by ACEMLA and the Settling Parties for Spanish language music in their respective catalogues.

20. The record contains evidence indicating that Hispanics comprise between 6% and 7% of the population of the United States, that a very high percentage of Hispanics continue to use the Spanish language in the home, that Hispanics purchase Spanish language music recordings in large numbers, that Spanish language music is broadcast over a large number of United States radio stations, and that Spanish language music appears on numerous jukeboxes. Although the Settling Parties apparently have databases which would permit them to determine the approximate percentage of Spanish language music included in their raw performance data, they have declined to submit evidence concerning this matter in any proceeding before the CRT. Given this state of affairs, it is apparent that the only evidence in the record related to this question consists of the U.S. Census materials and the studies of Hispanic's and their music preferences presented by ACEMLA. The only conclusion which can be reached on this evidence is that the amount of Spanish language music played on jukeboxes during 1984 is

related to the number of Hispanics in the population, but should be increased slightly by their demographics and their music preferences; i.e., that between 7% and 10% of the 1984 jukebox royalty funds should be distributed among the claimants who have proven that Spanish language music under their control was played by jukeboxes during 1984.

C. The Settling Parties' Failure to Provide Any Evidence That They Controlled Spanish Language Music Played on Jukeboxes, During 1984 Requires That All of the Royalties Attributable to Spanish Language Music Be Awarded to ACEMLA

21. Section 116(c)(4)(B) of the Statute provides that after distributions have been made to individual copyright owners, the "remainder of the fees" must be distributed to the performing rights societies according to the pro rata shares to which they have proved entitlement. The Statute does not permit the Tribunal to withhold any portion of the fees for the benefit of claimants who have not participated. Thus, the statutory scheme contemplates that all of the royalty fees collected be distributed, even if the evidence does not conclusively demonstrate that the claimants to the Tribunal represent all of the entities which "earned" copyright fees by virtue of the fact that their music was played on jukeboxes.

22. The Settling Parties chose to present little or no evidence concerning their entitlement to any of the fees

which were attributable to the play of Spanish language music on jukeboxes during 1984. The Statute clearly requires both the Settling Parties and ACEMLA to provide some proof of entitlement to the funds they claim. ACEMLA v. CRT, supra, 763 F.2d at 109. ACEMLA concedes that the proof submitted by the Settling Parties provides an adequate basis for the Tribunal to award them all of the fees attributable to non-Spanish language music, i.e., between 90% and 93% of the total funds. However, the Settling Parties are required to prove their entitlement to the remainder of the fees if they are to receive any portion thereof.

23. In the Order Consolidating Proceedings and Setting Future Procedural Dates, released in the 1982/1983 Jukebox Proceedings on July 30, 1985, the Tribunal described the type of evidence it would consider, stating that claimants were free to present evidence that Spanish language titles under their control were played on jukeboxes, broadcast on radio or television, performed in other media or listed in charts of best selling records. Although ACEMLA -- whose resources and existing databases are miniscule in comparison to those of the Settling Parties -- was able to obtain and introduce evidence in most of these categories, the Settling Parties offered no evidence of the type suggested by the Tribunal relating to their own Spanish language repertories.

Rather than present the type of evidence suggested by the Tribunal, the Settling Parties took the position that since they are statutorily defined performing rights societies, they were not required to submit proof in this proceeding unless ACEMLA is found to be qualified as a performing rights society. Tr. 387-388, 489.

24. The Settling Parties obviously had access to extensive data of the type previously endorsed by the Tribunal. For example, in the 1982/1983 Jukebox Proceedings, they presented to the Tribunal an informal study of music played on jukeboxes in Hispanic neighborhoods in certain parts of the United States. Thousands of Spanish language musical compositions were listed in the study, but the Settling Parties did not attempt to identify for the Tribunal those compositions which they controlled. Similarly, although the Settling Parties produced a list of Spanish language titles which first appeared in their repertories during 1984,[8] and, in previous cases, they have produced additional listings of Spanish language music allegedly under their control, they have never attempted to show the credits any of their titles earned through public performances on radio and other media in any year. Interestingly, in rebuttal in this proceeding, the Settling Parties

---

[8]See S.P. Ex. 4.

presented studies of the public performance credits earned by a limited number of the compositions controlled by ACEMLA. See S.P. Exs. 30R and 31R. If such data was easily obtainable for ACEMLA's works, why wasn't the Tribunal provided with similar data to prove the Settling Parties affirmative cases?

25. Given the fact that the Tribunal specifically declined to "reach the question of whether ACEMLA was a performing rights society in 1984 . . ." in the 1982/1983 Final Determination, 50 Fed. Reg. 47577, 47579, ACEMLA submits that the Settling Parties' actions demonstrate a certain hubris which ultimately makes the Tribunal's task more difficult than otherwise might have been the case. Their tactics were also risky, because, as the D.C. Circuit held long ago, "we cannot allow [a party] to sit back and hope that a decision will be in its favor and then, when it isn't, to parry with an offer of more evidence". Colorado Radio Corp. v. FCC, 118 F.2d 24, 26 (D.C. Cir. 1941). In short, if, as ACEMLA submits it must, the Tribunal concludes that ACEMLA is a performing rights society, the Settling Parties cannot be permitted to offer additional evidence without violating ACEMLA's rights to due process of law under the Administrative Procedure Act.

26. Furthermore, it must be concluded that the Settling Parties' decision not to offer affirmative evidence on

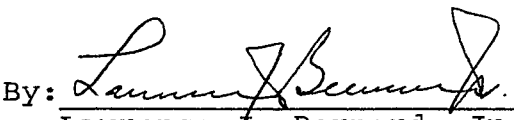
the strength of their Spanish language repertories was based on their knowledge that such evidence would have revealed that they did not control a substantial part of the Spanish language music played on jukeboxes in 1984. The failure of parties to produce relevant evidence within their control creates an adverse inference that the withheld evidence would have weighed against their claims. See 2 Wigmore, Evidence, §§285-291 (Chadbourn Rev. 1979); McCormick on Evidence, §272 (3d Ed., 1984); Blue Ridge Mountain Broadcasting Co., Inc., 37 FCC 791, 795-796 (Rev. Bd. 1964), aff'd per curiam, 6 Rad. Reg.2d (P&F) 44 (D.C. Cir. 1965).

27. Having taken the calculated risk that the Tribunal would conclude ACEMLA to be a performing rights society, the Settling Parties must suffer the reasonable and foreseeable consequenes of their decision; i.e., that the Tribunal may not award any of the funds attributable to Spanish language music played on jukeboxes during 1984 to the Settling Parties. Accordingly, since ACEMLA has proven its claims to a substantial portion of the Spanish language music played on jukeboxes in 1984, the Statute

requires that no less than 7% of the total 1984 jukebox royalty funds must be distributed to ACEMLA.

Respectfully submitted,

ASOCIACION DE COMPOSITORES Y
EDITORES DE MUSICA LATINOAMERICANA

By: 

Lawrence J. Bernard, Jr.
Ward & Mendelsohn, P.C.
1100 17th Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 785-0200

Counsel for ACEMLA

ATTACHMENT A

Washington, D.C. 20011. (202) 723-5800. Pres.: Rev. Virgil C. Funk.
National Association of Performing Arts Managers & Agents, Inc. (NAPAMA), 1860 Broadway, Suite 1610, New York, NY 10023. (212) 245-5259.
National Association of Recording Merchandisers, Inc. (NARM), Box 1970, 1008-F Astoria Blvd., Cherry Hill, NJ 08034. (609) 424-7404. Pres.: Lou Fogelman; Exec. Vice Pres.: Joseph Cohen; Vice Pres.: Dan Davis.
National Association of Schools of Music, 11250 Roger Bacon Dr., No. 5, Reston, VA 22090. (703) 437-0700. Pres.: Thomas Miller; Exec. Dir.: Samuel Hope.
National Association of Teachers of Singing, Inc., 250 W. 57 St., Suite 2129, New York, NY 10019. (212) 582-4043. Pres.: John Burgin; Exec. Sec.: James Browning.
National Choral Council, 20 W. 40 St., New York, NY 10018. (212) 869-0970.
National Federation of Music Clubs, 1336 N. Delaware, Indianapolis, IN 46202. (317) 638-4003. Pres.: Mrs. Dwight D. Robinson.
Branch: 7 Ransom Rd., Athens, OH 45701.
National Guild of Piano Teachers, Teacher Div. of American College of Musicians, Box 1807, 808 Rio Grande, Austin, TX 78767. (512) 478-5775.
National High School Band Institute (Nat'l High School Band Dirs. Hall of Fame), 519 N. Halifax Ave., Daytona Beach, FL 32018. Founder & Pres.: Bobby Lee Cude; Dir. of Hall of Fame & Museum: Dr. Watie R. Pickens.
National Music Council, 250 W. St., Suite 300, New York, NY 10019. (212) 265-8132.
National Music Publishers Association, Inc., 110 E. 59 St., New York, NY 10022. (212) 751-1930. Cable: HAFOX. Pres.: Leonard Feist.
National Opera Association, Rt. 2, Box 93, Commerce, TX 75428. (214) 886-3830. Pres.: Marajean Marvin; Exec. Sec.: Mary Elaine Wallace.
National Opera Institute, c/o John F. Kennedy Center, Washington, D.C. 20566. (202) 254-3694.
National Orchestral Association, 111 W. 57 St., New York, NY 10019. (212) 247-1228.
National School Orchestra Association, 330 Bellevue Dr., Bowling Green, KY 42101. (502) 842-7121. Chm.: James H. Godfrey; Pres.: G. Jean Smith.
New Music Seminar, 210 E. 90 St., New York, NY 10028. (212) 348-4876.
New Orleans Jazz Club of California, Box 1225, Kerrville, TX 78028. (512) 896-2285. Pres.: Bill Bacin.
New York Singing Teachers' Association, 175 W. 76 St., New York, NY 10023. (212) 787-7626. Pres.: Helen Lightner; 1st Vice Pres.: Robert Latherow.
Opera America, Inc., 633 E St. NW, Washington, D.C. 20004. (202) 347-9262. Admin'r: Martha M. Menard.
Organization of Country Radio Broadcasters, United Artists Tower, Suite 604, 50 Music Square W., Nashville, TN 37203. (615) 327-4488, 329-4487. Exec. Dir.: Frank Mull.
Peter Pan Music, 145 Komorn St., Newark, NJ 07105. (201) 344-4214. Pres.: Martin Kasen; Vice Pres. Sales: James F. Monaghan.
Phi Beta Fraternity, Univ. of Houston, School of Communication, Houston, TX 77004. (713) 749-3521, 747-5305. Nat'l Pres.: Dr. Martha J. Haun.
Phi Mu Alpha Sinfonia Fraternity, 10600 Old State Rd., Evansville, IN 47711. (812) 867-2433. Lyecrest Dir.: Jylene D. Wright.
Piano Technicians Guild, Inc., 9140 Ward Pkwy., Kansas City, MO 64114. (816) 444-3500. Pres.: Charles P. Huether, RTT.
Pop Record Research, 17 Piping Rock Drive, Ossining, NY 10562-2307. (914) 762-8499. Dir.: Gary Therdux; Oprns: Joan Holpuch.
Private Press, c/o 8940 151 Ave., #1K, New York, NY 11414. (212) 484-3121. Pres.: Robyn Jennifer; Sales Mgr.: Jan Haust.
R I A A, see Recording Industries Association of America.
R I A A/Video, see Recording Industries Association of America.
Recording Industries Association of America (RIAA), 888 Seventh Ave., New York, NY 10106. (212) 765-4330. Pres.: Stanley M. Gortikov; Exec. Dir.: Stephen Traiman.
Richard H. Roffman Associates, 697 West End Ave., New York, NY 10025. (212) 749-3647. Pres.: Richard Roffman; Sales Mgr.: John Bowman..
S P E B S Q S A, see Society for the Preservation & Encouragement of Barber Shop Quartet Singing in America.
S R S, see Songwriters Resources & Servs.
Society for the Preservation & Encouragement of Barber Shop Quartet Singing in America (SPEBSQSA), 6315 Third Ave., Kenosha, WI 53140. (414) 654-9111. Exec. Dir.: Hugh A. Ingraham.
Society of the Classic Guitar, Box 566, Lenox Hill Sta., New York, NY 10021. (212) 807-7709.
Songwriters Guild of America (formerly AGAC), 276 5th Ave., New York, NY 10001. (212) 686-6820. Cable: SONGRITE. Pres.: George David Weiss.
Songwriters Resources & Services (SRS), 6772 Hollywood Blvd., Hollywood, CA 90028. (213) 463-7178/5691. Pres.: Pat Luboff.
South Florida Music Association, 8404 W. McNab Rd., Tamarac, FL 33321. (305) 753-9539. Coord.: Ray C. Rohlfing; Dir.: Shirley M. Pearl.
Texas Music Association, 1800 Guadalupe, Austin, TX 78701. (512) 480-8876. Pres.: Mike Tolleson.
Tri-Son, Inc., Box 177, Wild Horse, Colorado 38862. (303) 962-3543. Pres.: Loudilla Johnson; Sales Mgr.: Loretta Johnson/Kay Johnson.

United States Institute for Theatre Technology, Inc., 330 W. 42 St., Rm. 1702, New York, NY 10036. (212) 563-5551. Pres.: Dr. Ronald C. Olson; Admin. Sec.: Keith King.
Universal Jazz Coalition, Inc., 156 Fifth Ave., Rm. 434, New York, NY 10010. (212) 924-5026. Exec. Dir.: Nobuko Cobi Narita.
V S D A, see Video Software Dealers Association.
Video Software Dealers Association (VSDA), Box 1910, 1008-F Astoria Blvd., Cherry Hill, NJ 08034. (609) 424-7117. Pres.: Frank Barnako; Exec. Vice Pres.: Dan Davis.
Videotape Production Association (VPA), 236 E. 46 St., New York, NY 10017. Exec. Dir.: Janet Luhrs.
Videxpo International, 1414 Avenue of the Americas, New York, NY 10019. (212) 489-9245. Cable: VENTINTAL NEWYORK. Telex: RCA Int'l-234107 MUSE UR. Pres.: Roddy S. Shashoua; Sales Mgr.: William Perkins.
Violoncello Society, Inc., 101 W 57 St., Suite 2D, New York, NY 10019. (212) 246-3267. Pres.: Claus Adam; Exec. Admin'r: Esther Prince.
White Rock Records, Inc., 401 Wintermantle Ave., Scranton, PA 38505. (717) 343-6718. Pres.: Phil Ladd; Sales Mgr.: Phil Ladd.
Young Audiences, Inc., 115 E. 92 St., New York, NY 10028. (212) 831-8110. Exec. Dir.: Warren H. Yost.

ENTERTAINMENT ATTORNEYS

Addresso, Merovitch & Lane, 153 Stevens Ave., Mt. Vernon, NY 10550. (914) 699-6052.
Branch: 55 Locust Ave., Rye, NY 10580. (914) 967-6900.
Aldredge & Levitan, 1204 17th Ave. S., Nashville, TN 37203. (615) 320-1533. Attys: Sawnie Aldredge and Kenneth Levitan.
American Guild of Musical Artists, 1841 Broadway, Ste. 911, New York, NY 10023. (212) 265-3687. Pres.: Nedda Casei; Nat'l Ex.: Gene Bouche.
Benson & Siman, 1207 17th Ave. S., Nashville, TN 37212. (615) 320-6161. Attys: Craig B. Benson and Scott F. Siman.
Arthur T. Berggren, 448 South Canon Dr., Upper Suite, Beverly Hill, CA 90212.
Blackwood Music Group, Box 17272, Memphis, TN 38187-0272. (901) 377-8825. Pres.: Ron Blackwood.
Bushkin, Gaims, Gaines & Jonas, 2029 Century Park E., Ste. 2500, Los Angeles, CA 90067. (213) 553-6666. Telex: 9104903817. Senior Partner: Frederic N. Gaines.
Cooper Epstein & Hurewitz, 9465 Wilshire Blvd., Beverly Hills, CA 90212. (213) 278-1111. Cable: Trademarks. Telex: 6711250/698217.
Vivienne A. Crawford, Esq., 1429 Walnut St., Ste. 905, Philadelphia, PA 19102. (215) 569-2103.
Max Fink, 9777 Wilshire Blvd., Ste. 700, Beverly Hills, CA 90212. (213) 273-6760, 272-9181.
Mark A. Fischer (Cohen & Burg, P.C.), 33 Broad St., Boston, MA 02109. (617) 742-7840, 492-4400. Cable: TECHLAW. Telex: 95-1417.
Joseph W. Fodor (Kelsey Melnik & Hendler), 70 Richmond St. E., Ste. 400, Toronto, Ontario, Canada M5C 1V7. (416) 360-1971.
Peter Franek, 433 California St., San Francisco, CA 94104. (415) 781-3514.
Robert E. Gordon, 2330 Marinship Way, Ste. 205, Sausalito, CA 94965. (415) 331-1700. Cable: LAWMUSE, SAUSALITO.
Robert S. Greenstein, 2049 Century Park E., 11th floor, Century City, CA 90067. (213) 203-9979.
Grubman Indursky & Schindler P.C., 575 Madison Ave., New York, NY 10022. (212) 888-6600. Telex: 426104 AJC.
Harris, Leach, Gordon, Martin & Jones, 704 18th Ave. S., Nashville, TN 37203. (615) 259-4507.
Peter A. Herbert, 99 Wall St., New York, NY 10005. (212) 809-1990. Telex: HERBERTNY.
Jacobi & Jacobi, 1313 N.E. 125th Street, North Miami, FL 33161. (305) 893-4135. Telex: 820384 (BROTHERS). Allen L. Jacobi, Esq.

JACOBSON & COLFIN

150 5th Ave., New York, NY 10011.
(212) 691-5630. Telex: 226000 "JLAW." Attys: Jeffrey Jacobson and Bruce Colfin.

Neville L. Johnson, 9028 Sunset Blvd., Ste. 203, Los Angeles, CA 90069. (213) 859-0288. Neville L. Johnson, Esq.
Quincy Jones Prodn's/Qwest Records/Qwest Music Group, 7250 Beverly Blvd., Los Angeles, CA 90036. (213) 934-4711.
Clayton P. Knowles, Jr., 605 Third Ave., Ste. 1501, New York, NY 10158. (212) 972-1100. Cable: KNOWLAW. Telex: 420127.
LegalVision, Inc., c/o Jacobson & Colfin, 150 5th Ave., New York, NY 10011. (212) 691-5630. Cable: Telexcom "JLAW." Telex: 226000 "JLAW." Pres.: Bruce E. Colfin.
Harley I. Lewin, P.C., 250 W. 57th St., Ste. 515, New York, NY 10107. (212) 586-3490.
Lloyd & Lloyd, 600 Renaissance Center, Ste. 1400, Detroit, MI 48243. (313) 259-0747.
Harold Luick & Associates, 110 Garfield St., Carlisle, IA 50047. (515) 989-3679.
Manson, Jackson & Associates, 939 Jefferson St., Ste. 200, Nashville, TN 37208. (615) 254-1600. Attys: Richard Manson and Richard Jackson.
Kendall A. Minter, c/o Barnes Wood Williams & Rafalsky, 11 Hanover Square, New York, NY 10005. (212) 809-2900. Telex: 4971445.
Pack & Neil, 219 2nd Ave. N., Nashville, TN 37201. (615) 244-0626. Attys: David M. Pack and A.B. Neil, Jr.
Edward P. Pierson, 428 E. 11th Ave., Denver, CO 80203. (303) 839-5789.
Roger L. Prillaman, 102 W. Main, Ste. 200, Urbana, IL 61801. (217) 384-1300.
Richard H. Roffman Associates, 697 West End Ave., New York, NY 10025. (212) 719-3647.
Daniel Schiffman, 380 Lexington Ave., Ste. 4099, New York, NY 10168. (212) 682-2373.
Ralph I. Seltzer, c/o Great Oak Vineyard, 1751 Draper Valley Rd., Selma, OR 97538. (503) 597-2161. Cable: MUSICWORLD Selma.
Thorpe Shuttleworth, 380 Lexington Ave., Ste. 4099, New York, NY 10168. (212) 682-2373.
Martin E. Silfen, P.C., 545 Fifth Ave., New York, NY 10017. (212) 986-0890.
Steele & Utz, 1320 19th St., N.W., Washington, DC 20036. (202) 785-2130. Telex: 752440 UTZ WSHUD. St. Corp. Partner: William Nelson Utz.
Joel S. Turtle, 1032 Broadway, Russian Hill, San Francisco, CA 94133. (415) 928-4500. Cable: TURTLELAW. Telex: 901 366 7172. Branch: 1888 Century Park East, Century City, CA 90067. (213) 277-2224.

Upswing Artists Mgmt., Ltd., c/o Jacobson & Colfin, 150 5th Ave., New York NY 10011. (212) 691-5630. Cable: Telexcom "JLAW." Telex: 226000 "JLAW." Pres.: Martin Steckler.
Jack Uram, 630 Third Ave., New York, NY 10017.
Lee Williams, 2811 Wilshire Blvd., Ste. 900, Santa Monica, CA 90403. (213) 829-1881. Telex: 182100.
Lawrence Udess, 2 Dicks Lane, Roslyn, NY 11576. (516) 484-5291.
Zane Management, Inc., 700 Three Penn Center Plaza, Ste. 700, Philadelphia, PA 19102. (215) 563-1100. Atty: Lloyd Zane Remick, Esq.

ZUMWAIT, ALMON & HAYES

1014 16th Ave. S., Nashville, TN 37212.
(615) 256-7200.
Branch: Kimbrough Towers, 1491 Union Ave., Memphis, TN 38104. (901) 274-7067. Attys: James G. Zumwalt, Orville Almon, Jr., Craig Hayes, Lee Wilson.
New York Counsel: David Werchen.

LICENSING ORGANIZATIONS, MUSIC

A C E M L A, 214 W. 96th St., New York, NY 10025. (212) 866-3111. Pres.: L. Raul Bernard. (Performing and mechanical rights)
A M R A (American Mechanical Rights Association), 2112 Broadway, Suite 505, New York, NY 10023. (212) 246-4077. Exec. Dir.: Rosalie W. Miller. (Mechanical rights only)
A S C A P (American Society of Composers, Authors & Publishers), ASCAP Bldg., 1 Lincoln Plaza, New York, NY 10023. (212) 595-3050. Pres.: Hal David. (Performing rights only)
Membership offices: 6430 Sunset Blvd., Suite 1002, Hollywood, CA 90028. (213) 466-7681—2 Music Square W., Nashville, TN 37203. (615) 244-3936.
Licensing offices: 2121 S. El Camino Real, Rm. 715, San Mateo, CA 94403. (415) 574-6023—1065 NE 125 St., North Miami, FL 33161. (305) 895-6390—1 Perimeter Way NW, Suite 415, Atlanta, GA 30339. (404) 952-8843—10400 W. Higgins Rd., Suite 235, Rosemont, IL 60618. (312) 827-6810—818 Howard Ave., Suite 305, New Orleans, LA 70113. (504) 524-7701—10 Speen St., Framingham, MA 01701. (617) 875-3515—755 W. Big Beaver Rd., Suite 306, Troy, MI 48084. (313) 362-2444—7851 Metro Pkwy., Suite 106, Bloomington, MN 55420. (612) 854-0763—27801 Euclid Ave., Suite 260, Cleveland, OH 44132. (216) 289-7616—Benjamin Fox Pavilion, Suite 807, Old York Rd., Jenkintown, PA 19046. (215) 885-2510—North Point Bldg., 9800 McKnight Rd., Suite 230, Pittsburgh, PA 15237. (412) 366-2345—First Federal Savings Condominium, Off. 505, 1519 Ponce de Leon Ave., Santurce, P.R. 00910. (809) 725-1688—16990 Dallas Pkwy., Suite 255, Dallas, TX 75248. (214) 248-8022—5959 Westheimer, Suite 107, Houston, TX 77057. (713) 780-4289—444 NE Ravenna Blvd., Suite 306, Seattle, WA 98115. (206) 524-8185.
Int'l membership office: England.
Allen-Martin Productions/Jefferson Audio Video Systems, 9701 Taylorsville Rd., Louisville, KY 40299. (502) 267-9658. Pres.: Ray Allen; Sales Mgr.: Michael T. Gibson.
Alshire International, Inc., Custom Div., 1015 Isabel St., Box 7107, Burbank, CA 91510. (213) 849-4671. Telex: 1-910-498-2759. Cable: BUDSOUND. Pres.: Al Sherman; Sales Mgr.: Dick Ceja.
Apon Record Co., Inc., Box 3082 Steinway Station, Long Island City, NY 11103. (212) 721-5599. Pres.: Andrew M. Poncic; Sales Mgr.: Don E. Zemann.
Asociación de Compositores y Editores de MusicLatino Americana (ACEMLA), 214 West 96th St., New York, NY 10025. (212) 866-3112. Cable: -OTOARECO. Pres.: L. Raul Bernard; Mgr.: Nancy Bernhard.
B M I (Broadcast Music, Inc.), 320 W. 57 St., New York, NY 10019. (212) 586-2000. Cable: BROCASTMUS. Telex: 127823. Pres.: Edward M. Cramer; Sr. Vice Pres.: Theodora Zavin; PR Coord.: Joan Thayer. (Performing rights only)
Branches: 6255 Sunset Blvd., Hollywood, CA 90028. (213) 465-2111—1650 Borel Pl., San Mateo, CA 94402. (415) 349-9590—1320 S. Dixie Hwy., Coral Gables, FL 33146. (305) 666-6122—5105 Tollview Rd., Suite 240, Rolling Meadows, IL 60008. (312) 870-8060—Shovel Shop Square, No. 3-A, North Easton, MA 02356. (617) 238-0174—275 Broadhollow Rd., Melville, NY 11747. (516) 293-6644—Pan Am Bldg., Suite 905, 255 Ponce de Leon Ave., Hato Rey, P.R. 00917. (809) 754-6490—10 Music Square E., Nashville, TN 37203. (615) 259-3625. Vice Pres.: Frances Preston—8401 Westheimer St.,

CERTIFICATE OF SERVICE

I, Lawrence J. Bernard, Jr., do hereby certify that on this 20th day of October, 1986, I sent copy of the foregoing "ACEMLA's Proposing Findings of Fact and Conclusions of Law" by hand delivery via Reid and Priest messenger, to each of the following:

Bernard Korman, Esq.
I. Fred Koenigsberg, Esq.
ASCAP
One Lincoln Plaza
New York, New York 10023

Charles T. Duncan, Esq.
Lisa Holland Powell, Esq.
Reid and Priest
Suite 1100
1111 19th Street, N.W.
Washington, D.C. 20036

Nicholas Arcomano, Esq.
Vice President & Counsel
SESAC, Inc.
10 Columbus Circle
New York, New York 10019

Lawrence J. Bernard, Jr.